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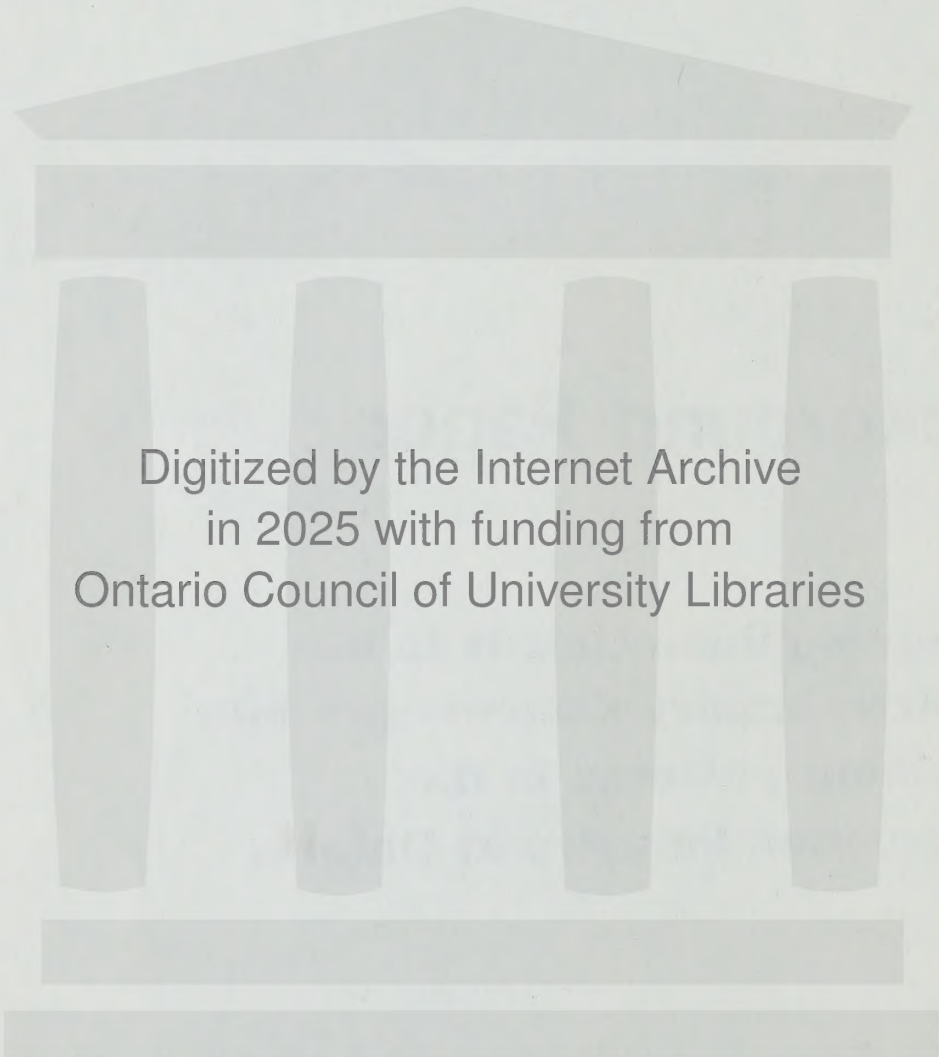
Background Paper

Concerning Submissions to the Industrial Inquiry Commission into bargaining patterns in the Construction Industry in Ontario



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BACKGROUND PAPER

CONCERNING SUBMISSIONS TO THE INDUSTRIAL INQUIRY COMMISSION INTO BARGAINING PATTERNS IN THE CONSTRUCTION INDUSTRY IN ONTARIO

OCTOBER 3, 1975 D. E. FRANKS

With the issuance of this Background Paper the Industrial Inquiry Commission requests interested parties to submit briefs and make their representations to the Commission on the subject matter of its inquiry. In the hope of facilitating the making of such representations I have taken the liberty of setting out as many of the problems faced by this inquiry as I can presently foresee. I have also set out in some detail the kind of information I would appreciate receiving in any briefs or representations made to the Inquiry Commission.

There is no doubt that the present bargaining structures in the construction industry create many problems for those involved with that industry. Any resolution of these problems undoubtedly requires the co-operation and participation of those involved. In this Background Paper I have raised certain matters which must be resolved if the Inquiry Commission is to propose a practical solution to the problems raised by the present structure of collective bargaining in the construction industry. Further, I am inclined to think these problems will not disappear if they are simply ignored.

The Inquiry Commission will be accepting written briefs at any time during the period from October 15, 1975 to December 31, 1975. It is also my intention to conduct informal hearings during this same period at which parties will be given an opportunity to present their representations to the Inquiry. These hearings will be held in Toronto and in various centres throughout the province.

Arrangements concerning hearings can be made by writing :

Construction Industry Inquiry Commission,
14th Floor, 400 University Avenue,
Toronto 2, Ontario.

Telephone : 965-3997

SCOPE OF THE INQUIRY

In December of 1974 I was appointed by the Minister of Labour to conduct an industrial inquiry commission pursuant to section 34 of the Ontario Labour Relations Act. The terms of reference of the Inquiry are :

1) to inquire into the existing bargaining areas and bargaining patterns in the construction industry,

2) to define the problems resulting from the present bargaining patterns in the construction industry,

3) to propose methods for reducing and rationalizing the number of bargaining patterns in the construction industry.

The establishment of an Inquiry Commission was the result of recommendations by the Construction Industry Review Panel to the Minister of Labour that a commission be set up to study "wider-area bargaining" in the construction industry in Ontario.

Since my appointment I have held a number of informal discussions with persons on both sides of labour-management relations in the construction industry. The consultations have been informative and I wish to express my thanks to those involved. The one theme that emerged from these meetings is a growing acceptance of the fact that the present structure of bargaining is creating serious problems. Further, there is an increasing realization that these problems can only be solved by substantial co-operation and adjustment by both sides.

The work of the Inquiry Commission has now reached the stage where I shall be holding public hearings to obtain the representations of interested parties. In order to assist those interested in making representations to the Commission and because of the rather complex terms of reference, I have decided to issue the present Background Paper.

From the outset it should be clear that the Inquiry Commission is dealing solely with the organized sector of the construction industry. It is clearly not the role of this Commission to question whether or not collective bargaining should continue in the construction industry. Nor is it within the scope of the Commission's Inquiry to deal with specific matters dealt with in construction industry collective bargaining such as hiring halls, jurisdictional disputes or subcontracting requirements.

The subject of this Inquiry is the patterns or structures of the bargaining process and how these structures affect bargaining. Thus we shall be dealing primarily with how collective agreements are made and how they operate in the construction industry.

THE PROBLEM STATED

Any attempt to state the basic problem faced by this inquiry probably starts with the observation that there are approximately three hundred standard area collective agreements affecting the construction industry in Ontario. Even after extensive research, one can only state the approximate number of standard area agreements. Further, since these collective agreements are area agreements they apply to a number of employers, in fact, any employer who does the work covered by that collective agreement in unionized construction is bound by such a collective agreement.

As a result of previous collective bargaining a substantial number of these three hundred agreements had been co-ordinated to expire on April 30th of 1975. Thus in a very short span of time approximately two hundred and fifty collective agreements came up for re-negotiation.

The problem that arises when such a multiplicity of bargaining occurs was succinctly stated by Mr. George Meany, President of the A.F.L.- C.I.O., when he commented recently that "each local negotiates as if there was no other ". The problem is that there are other locals and that bargaining is not done in a vacuum. Each settlement affects other settlements and is itself affected by other settlements.

For some time now, the effect of one collective bargaining situation on another bargaining situation has been referred to as either leap-frogging or whip-sawing, depending whether it was between areas or between trades.

The real problem is not that whip-sawing and leap-frogging occur or that such tools are available to one side of the collective bargaining process and not the other. The real problem is that frequently on both sides of the bargaining table the persons who most affect the bargaining are not present. The problem we are confronted with is how the structure of collective bargaining in the construction industry can be changed so that those who affect bargaining and are affected by it actually do the bargaining.

SOME BASIC ELEMENTS OF THE PRESENT BARGAINING STRUCTURES

In order to avoid confusion and hopefully to facilitate discussion it is desirable at this point to set out certain of the basic elements (or ingredients) of the present bargaining structures in construction. The present situation is one that has evolved over a period since the turn of the century and a look at these origins still form the quickest insight into the present situation. Originally, the building trade unions consisted of local trade unions which were collections of tradesmen having certain skills and experience and prepared to do certain types of work in the vicinity of the local trade union. Collective agreements set the wages, hours and other terms of employment for tradesmen working out of the particular local. The agreement applied to any employer who hired workmen and consequently was negotiated by the trade union with the local employers. Frequently these employers used the vehicle of a local builder's exchange to conduct negotiations with various trade unions.

Over the years the situation has become more sophisticated and more complex, nevertheless, this description still characterizes much of the bargaining in the construction industry in Ontario.

The typical construction industry collective agreement of to-day sets the wages, working conditions and terms of employment for a particular trade,which may or may not be all of the employees of any particular employer. That collective agreement operates over a geographic area. In some instances this geographic area is spelled out in the collective agreement, in other instances a reference

is made to the geographic jurisdiction of the particular trade union. These references to trade and geographic area determine the bargaining unit set out in the collective agreement i.e. they define the group of employees for whom the trade union is the exclusive bargaining agent under the Ontario Labour Relations Act.

It is important to note, however, that the Labour Relations Act in Ontario provides for either certification of a trade union (in which case the Ontario Labour Relations Board sets the appropriate bargaining unit) or for voluntary recognition (in which case the parties are usually at liberty to define the bargaining unit that they consider appropriate). In practice certain trade unions obtain bargaining rights by voluntary recognition while others are certified by the Ontario Labour Relations Board.

In construction industry certification cases, the O.L.R.B. has had two basic policies relating to bargaining units. In such cases, because of the craft structure of the construction industry, the Board has, with few exceptions, described bargaining units in terms of the construction trades. However, the Board has developed a number of fixed geographic areas. These areas are set out in a map distributed by the O.L.R.B. and they are the geographic areas which the Board will use in its description of the appropriate bargaining unit. In constructing the set of standard geographic areas, the O.L.R.B. has tried to reflect the bargaining patterns in particular localities. Unfortunately, in many cases this is less than a loose approximation of the collective agreements in a particular area. In fact, most of the standard area collective agreements in the Ontario construction industry do not use the geographic areas in the O.L.R.B.'s map of geographic areas.

There is a great deal of variation in the types of institutions that are party to area collective agreements. On the union side the party to the agreement may be a local trade union, a council of trade unions or the parent trade union. On the employer side the signatory may be a number of individual contractors, an association of contractors or an accredited employers' organization.

The Ontario Labour Relations Act provides for the accreditation of employer associations. Under this legislation the employer organization that is able to demonstrate its support of a weighted majority of employers becomes the exclusive bargaining agent of a defined group of employers. Thus, the accredited association becomes the only group with which the trade union can lawfully make a collective agreement. Individual agreements are specifically prohibited by law. It was noted above that a bargaining unit in a collective agreement defines a group of employees for whom the trade union is the exclusive bargaining agent. In the accreditation proceedings the group of employers for whom the association becomes the exclusive bargaining agent is referred to as the unit of employers. The legislation requires that the Board determine an appropriate geographic area and an appropriate sector or sectors in determining the unit of employers. Since the legislation only deals with employers who are "unionized" it is only these employers who are required to bargain with the trade union that are affected by the accreditation legislation, in effect those who are party to a standard area collective agreement. In most cases the O.L.R.B. has found the area in the standard area collective agreement as the appropriate geographic area for accreditation.

The O.L.R.B. is also required in determining the appropriate unit of employers to determine the appropriate sector of the construction industry. The term sector is defined in the Labour Relations Act as including a number of specified sectors. The basic concept from which the idea of sector is derived is of importance here. Over the years, in collective bargaining in the construction industry, certain conditions relating to the work affected by a collective agreement gave rise to special terms in the collective agreement. These became separate collective agreements in the overall bargaining structure. The significance of these separate agreements is that they are an exception to the basic characteristics of a standard area collective agreement. In order to understand the operation of collective agreements in the construction industry, it is essential to recognize the ethic accepted by both trade unions, employers and employer associations, that for the type of work covered by a particular construction industry collective agreement, every employer who does that work does it under that standard area agreement.

POSSIBLE DIRECTIONS IN RE-STRUCTURING BARGAINING

As noted above, the multiplicity of bargaining situations leads to the problem that those who affect bargaining or who are affected by bargaining are frequently not present at the bargaining table. The problem faced by this Commission is thus to find ways of reducing the total number of bargaining situations.

Logically, it would appear that this can be done by moving in one or other or some combination of two general directions. The present number of bargaining units can be reduced i.e. the present groups are consolidated into fewer but larger groups. On the other hand, the bargaining situations themselves could be co-ordinated so that the net result is fewer bargaining situations. Each of these directions raises certain difficult problems.

When one attempts to consolidate small bargaining groups into larger groups, the major difficulty encountered is a conflict with the idea that the trade union is the exclusive bargaining agent for the employees in the bargaining unit. A similar problem occurs with associations where, under the accreditation provisions, the association becomes the exclusive bargaining agent. The problem becomes one of determining how the individual bargaining agencies, under the present structure, relate to the new consolidated bargaining agency.

Presently, the Ontario Labour Relations Act recognizes the existence of councils of trade unions and further provides for, under certain conditions, a council of trade unions to be certified as bargaining agent for a unit of employees of an employer.

On the other hand, there appears to be no mechanism under the Labour Relations Act whereby a group of trade unions can join together and be certified as a single bargaining agency for the employers with whom they presently bargain. Presently it would appear that a certified council of trade unions would have to be certified for each employer with which it deals.

In order for a council of trade unions to be certified as an exclusive bargaining agent, the legislation requires that "the Board shall satisfy itself that each of the trade unions that is a constituent union of the council has vested appropriate authority in the council to enable it to discharge the responsibilities of a bargaining agent" (Section 9 (1)). That provision of the Labour Relations Act has been used on a number of occasions. However, it is not adequate to deal with attempts to consolidate the present bargaining structures in the construction industry. Further, the main consequences that flow from being a certified council of trade unions relate to how bargaining is done in the event of the dissolution of a certified council of trade unions. Clearly, if the solution to our present problem lies in the direction of consolidation of present bargaining structures, then a more sophisticated concept of consolidated bargaining agency than that of a council of trade unions will have to be developed. However, on the employer side there is not even the equivalent of the council of trade unions under the present legislation. It is clear that any attempt to develop a more sophisticated concept in this area will need to deal with the way that the component parts relate to each other and to the consolidated agency in some detail.

If we examine the other possible direction, namely that of co-ordinating the bargaining situations, we are faced with the problem of determining how the various groups that are co-ordinated relate to each other and what rules will govern the co-ordinated bargaining.

It would appear that, regardless of which direction a solution is sought, the crucial issue becomes one of how the present multiplicity of parties in the bargaining process are to relate to each other and to the proposed re-structured bargaining process. It is important to remember that the present inquiry is concerned principally with bargaining in the construction industry i.e. the bargaining by which the area collective agreement is reached. This bargaining occurs only at very specific times and is usually of very short duration. However, this matter is quite distinct from the administration of that collective agreement during the period that it is in force.

In addition to the key problems outlined above, I should like to raise two other very important problems. These are problems which I feel are best discussed when one is attempting to re-structure bargaining although they relate to conditions after the present situation is re-structured. They are, however, quite capable of destroying any proposed re-structuring.

The first matter relates to the necessity to maintain the flexibility to change bargaining patterns. In certain circumstances a separate and new collective agreement is warranted, indeed this is frequently the way that the construction industry has reacted to major developments and changes in the industry. However, if such special arrangements can be made too easily any attempt at re-structuring will not last very long. The question thus arises as to when and under what conditions should changes in the proposed bargaining patterns be allowed.

The other problem refers to what might be called "the upsetting project" i.e. the extremely large project that uses a work force that is much larger than the size of the work force in its vicinity and which takes a long time to construct and thus for a long time represents a huge capital expenditure which is not in use. There have been numerous instances of such projects and the effect they have on collective bargaining in the construction industry simply cannot be ignored. If any attempt is made to re-structure bargaining in this province, it is necessary for the stability of any proposed re-structure to relate such projects to the proposed bargaining structure.

There have been various attempts to deal with such projects (e.g. free ride agreements, claiming the work is in a different sector, and various pre-job arrangements) but no solution to date appears very satisfactory. The economic forces generated by such large projects cannot be removed. It would therefore seem clear that some sort of relationship between these projects and the ordinary course of bargaining must be developed if the proposed re-structuring of bargaining is to have any stability.

REPRESENTATIONS AND BRIEFS

In addition to the foregoing problems, it would be appreciated if those presenting briefs and making representations to the inquiry commission would include in those representations as much of the following information as is feasible :-

1) Information About Present Bargaining Situations

Many of the construction industry area agreements are on file at the Research Branch in the Ministry of Labour. That information has been the subject of certain studies. However, in order to ensure that the present situation is viewed as accurately as possible, briefs should include :

a) the parties to the collective agreement
b) the area of the collective agreement
c) the type of work affected by the agreement
d) the number of employees affected by the agreement
e) the number of employers affected by the agreement
f) information about how bargaining is carried out

2) Problems Encountered In Bargaining

In this regard I would appreciate a discussion of any problems which arose in the recent round of bargaining or any serious problems which arose in previous sessions. Emphasis should be given to such matters as breakdowns in bargaining, situations where the bargaining structures changed and the effects of bargaining in other areas.

3) What Affects Bargaining In The Construction Industry

4) What Proposals They Have For Changing The Present Situation

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